

**REMARKS**

Claims 1 – 18 are pending in the application. In the present Response, Applicant cancels claim 11 without prejudice or disclaimer, and amends claims 1, 9, 10, 12, 13, 15, 16 and 18. No new matter has been added.

**REJECTION UNDER 35 U.S.C. § 112**

Claims 9, 10, 13 and 15 – 18 are rejected under the second paragraph of 35 U.S.C. § 112 as being indefinite. Specifically, the Examiner finds claims 9 and 10 as having grammatical and idiomatic errors, and finds terms in claims 13 and 15 – 18 that lack sufficient antecedent basis. Applicants amend claims 9, 10 and 13 – 15 to address the issues identified by the Examiner. Support for these amendments may be found, for example, in Applicant's specification at page 19, lines 7 - 15. Accordingly, Applicants respectfully request that the rejection under the second paragraph of 35 U.S.C. § 112 be withdrawn.

**REJECTION UNDER 35 U.S.C. § 103**

Claims 1 – 10, 13, 14, 16 and 18 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,201,810 to Masuda et al.. Claims 11, 12 and 15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Masuda in view of U.S. Patent Publication No. 2002/0133584 to Greuel et al. Applicant cancels claim 11 without prejudice or disclaimer, amends claims 1, 15, 16 and 18 to include the limitations of canceled claim 11, amends claim dependent claim 12 to conform to amended independent claim 1, and respectfully traverses these rejections.

In independent claims 1, 15, 16 and 18, Applicants disclose a communication device, system and control method for monitoring whether communications devices are congested, creating congestion information concerning the congested state of a communication device when a congested state is detected, and sending the congestion information to other devices in a network including the communication devices. Congestion monitoring includes monitoring a frequency of occurrence of the congested state, which information can be used to determine a probability of congestion (see, e.g., page 20, lines 5 – 24 of Applicant's specification).

Masuda discloses a high-speed routing control system including an optimizing unit for path control (see, e.g., abstract of Masuda). An adjacent area information collecting unit collects congestion information (monitor) cell) from an adjacent area to enable path selection to be optimized with regard to congestion (see, e.g., column 5, line 51 – column 6, line 6 of Masuda).

Unlike Applicant's claimed invention, Masuda fails to disclose or suggest that the congestion monitor unit monitors a frequency of occurrence of a congested state. The Examiner suggests that this feature is disclosed by Greuel at paragraph [0020] ("A router MIB ... may contain fields for ... packet discard rates"). While Greuel does suggest that a state of congestion can be declared on the basis of monitoring packet discard rates, unlike Applicant's claimed invention, Greuel fails to explicitly disclose or suggest that the frequency with which congested states are declared may also be monitored, for example, to determine a probability of congestion.

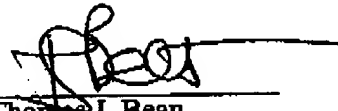
Accordingly, Applicant respectfully submits that independent claims 1, 15, 16 and 18 are not made obvious by the cited references, and are in condition for allowance. As each of dependent claims 2 – 10, 12 – 14, and 17 depends from one of allowable independent claims 1 and 16, Applicant further submits that dependent claims 2 – 10, 12 – 14, and 17 are allowable for at least this reason.

**CONCLUSION**

In view of the amendments and set forth above, this application is in condition for allowance which action is respectfully requested. However, if for any reason the Examiner should consider this application not to be in condition for allowance, the Examiner is respectfully requested to telephone the undersigned attorney at the number listed below prior to issuing a further Action.

Any fee due with this paper may be charged to Deposit Account No. 50-1290.

Respectfully submitted,



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TJB: fd